

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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Darell Bartos,

Civ. No. 10-3225 (DWF/LIB)

Plaintiff,

v.

Patenaude & Felix, APC,

**REPORT AND
RECOMMENDATION**

Defendant,

* * * * *

This matter came before the undersigned United States Magistrate Judge upon the routine supervision of cases and upon an assignment made in accordance with 28 U.S.C. 636(b)(1)(A). Plaintiff commenced this action on July 30, 2010. (Dkt. 1). On August 25, 2010, a return of service was filed disclosing that the Defendant had been served on August 18, 2010. (Dkt. 4). On September 29, 2010, it having appeared that 21 days had passed since the Defendant was served, and that it had not filed an answer or responsive motion, as required by Rule 12, the Court directed Plaintiff as follows:

- “1. Plaintiff is directed to notify Defendant that it is required to serve and file an answer or responsive pleading, or to move for an extension of time to do so;
2. That an application for entry of default is required with ten days of such notification if no such response is filed following such notification;
3. Plaintiff must advise the Court in writing of any good cause to the contrary;
4. Unless Plaintiff complies with this Order within twenty days of this date, we may recommend that this case be dismissed for lack of prosecution.”

(Dkt. 6, at p. 2). It has now been more than 20 days and the Defendant has not filed an answer or responsive motion, and Plaintiff has not filed an entry of default against the Defendant, nor has he advised the Court of any good cause for such failure.

As a consequence, the Court finds that Plaintiff has failed to abide by the terms of the Court's September 29, 2010 Order. Since the Court has forewarned Plaintiff of the potential consequences for his failure to abide by the Court's orders, the Court recommends that this action be dismissed for failure to comply with the Court's September 29, 2010 Order, and for lack of prosecution.

Based on the foregoing and all of the files, records and proceedings herein,

IT IS HEREBY RECOMMENDED that:

This action be dismissed for failure to comply with the Court's Order of September 29, 2010, and for lack of prosecution.


Leo I. Brisbois
U.S. MAGISTRATE JUDGE

DATED: November 9, 2010

NOTICE

Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties **by November 23, 2010**, a writing that specifically identifies the portions of the Report to which objections are made and the bases for each objection. A party may respond to the objections within fourteen days of service thereof. Written submissions by any party shall comply with the applicable word limitations provided for in the Local Rules. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. This Report and Recommendation does not constitute an order or judgment from the District Court, and it is therefore not directly appealable to the Court of Appeals.